BOOK REVIEWS.

THE LAW OF CONTRACTS. By William Herbert Page. Cincinnati: The W. H. Anderson Co., 1905. Three volumes. pp. ccccIxv, 3083.

The author of a legal treatise on any of the great general branches of the law must find difficulty in defining the limits of his subject, but this difficulty is presented in its most aggravated form to a writer on the law of contracts.

A number of topics usually separately treated in large works might logically be dealt with. Large parts at least of the law of Bills and Notes, Insurance, Partnership, Agency, Damages, Equity, Corporations, Quasi-Contracts, Bankruptcy, Conflict of Laws, Statutes of Frauds and Limitation might thus be included. To include all such topics, however, is unwise, for one seeking information on such special topics will naturally refer to treatises devoted exclusively to them. Mr. Page has not included in his plan a detailed treatment of all these divisions of the law of contracts, but he errs on the side of including too much rather than too little; for at least a chapter is devoted to each of the subjects we have mentioned; and even the subject of tortious Interference with Contracts is given a chapter. A result of this method is that not only are some of these subordinate topics treated so summarily that the student or practitioner will find little assistance—the treatment of the subject of Bankruptcy is thus noticeably unsatisfactory—but some questions which are discussed in books on contracts exclusively are omitted. The question whether an offer of a unilateral contract can be revoked after part performance of the consideration is not mentioned; nor is the possibility suggested that before breach of an unsealed contract the promisor may renounce his rights without consideration, though Sir William Anson devotes two pages of his little treatise to the question, and there are American authorities sanctioning the doctrine. Also the very important topic of contracts for the benefit of third persons is meagerly treated.

In his general arrangement the author follows Sir William Anson's treatise. This arrangement has always seemed to us unfortunate in including under the heading of Formation of Contract, treatment of such topics as Fraud, Mistake, and Duress. The theory of this arrangement is that there is no "reality of consent" if mutual assent is induced by fraud, mistake or duress, but it is desirable to distinguish clearly between lack of assent and assent which may be avoided. This distinction is vital in dealing with negotiable paper and with contracts by which property is transferred. Even in other cases it may be of importance. It is less clear upon the authorities but still true that legality of the object of a contract is not essential to its formation, in spite of countless statements that illegal contracts are void. A contract to marry a man already married is illegal but may be enforced by a plaintiff who was ignorant of the previous marriage. Other illustrations might be given. Fraud, mistake, duress, and illegality are defences to the obligation to perform a con-

tract or equitable grounds for its rescission, rather than vital defects in the elements necessary for its formation.

But methods of arrangement are of comparatively small importance and we turn to more vital matters. The work may be considered first with reference to its value as a collection and classified digest of decisions, and secondly with reference to the author's contribution to the law by clear and accurate statement of legal theory.

From the first point of view the book is deserving of praise. The collection of American decisions is very full, and is brought down surprisingly near to the time of publication. English decisions are not so thoroughly collected. This is probably accounted for by the statements of the author in his preface indicating his aim to be the exposition of American law. It should be observed, however, that there is, strictly speaking, no such thing as the American law of contracts. Not only is each State a separate jurisdiction, but on most questions there is little ground for the assumption that the law of one State resembles that of another more than that of England, and still less for the assumption that English decisions are of less persuasive authority than the decisions of the weaker American courts.

The cases cited by the author upon each point are arranged in a definite order—English cases, first, then decisions of the Supreme Court of the United States and lower Federal courts, then decisions of the courts of the several states in alphabetical order. If more than one decision of the same court is given, the most recent case is first cited, followed by others in the inverse order of the date of their decision. This systematic arrangement is so seldom found in legal treatises and is of such importance to the reader, especially in these days when scores of cases can be cited for the same point, that it deserves emphasis.

We have taken several pages in various parts of the book and examined the cases cited. The result justifies the conclusion that the cases bear out the propositions for which they are cited and that the names of the cases and the references to volume and page are given with unusual correctness. The fullness and accuracy of the citations must make the book of great value, both to the practitioner and student.

We regret that we cannot praise the book so highly for its statement of legal theory. The author rarely does more than reproduce the reasoning given in the cases. Where the decisions are not in conflict or the principles under discussion are simple this method is successful, but where there is diversity of authority and reasoning in the cases and where the questions are intrinsically difficult, no one can produce satisfactory results without thinking out for himself the correct solution of his legal problems and using this solution as a test of the validity of varying decisions.

At the outset the author objects to the use of the terms unilateral and bilateral as too ambiguous and academic. As there are no other single words to indicate the distinction, vital in the law governing both the formation and the performance of contracts, between a promise given in exchange for an act and a promise given in exchange for another promise, the rejection of the words is not unnaturally fol-

lowed by inadequate grasp of the ideas which they represent. This illustration is typical of a lack of close analysis which pervades the book. There is also insufficient statement of the historical development of legal doctrine. In his statement of the history of consideration, the author briefly restates Judge Holmes' theory of the development of assumpsit from debt, and does not refer to the later writings which have shown that theory to be erroneous.

Some will think that the defects we have noticed are of slight importance; that the proper function of a legal treatise is to state the law here and now, and that it is useless to occupy space by telling what English law is, or what the law used to be, or to attempt to analyze the principles of the law further than the courts have done. We believe, however, that these things are highly practical. With the vast multiplication of decisions, the only safety is in seeking by every method—comparative, historical, and analytical—the fundamental principles of the law.

THE PRINCIPLES OF THE ADMINISTRATIVE LAW OF THE UNITED STATES. By Frank J. Goodnow. New York: G. P. Putnam's Sons. 1905. pp. xxvii, 480.

After an interval of twelve years this work on American Administrative Law follows one by the same author on Comparative Administrative Law. With a few minor exceptions the system of treatment adopted in the earlier work is adhered to. This is of especial advantage in a study which is of so recent adoption in the United States. The only corresponding chapter of the earlier work, bearing on American administration, whose excision from the new is complete, is Chapter IV of Book V, "The Socialistic Action of the Administration." The other most important changes in the system of treatment are found in the expansion of the three sections of Chapter I of Book VI, concerning the formation of the control over the administration, to three chapters in the new work, and in the title of Chapter IV of the same book, which, if the old terminology had been employed, would have been "The Administrative Jurisdiction in the United States," but which appears as "Extraordinary Judicial Remedies."

Perhaps the chief difference in substance between this work and that on Comparative Administrative Law—if the expansion in treatment of the American Law, and the exclusion of the European Law, are excepted—is found in the attention given to the functions of government, and their separation. Professor Goodnow states that there are but two functions of government, one the expression of the state will, the other the execution of the state will; the first denominated Politics and the second Administration. Though the distinction may be said to be implicit in his earlier work—it is employed, for instance, in Book V, on administrative action—its full development has been a fruit of the years which have intervened. Its first extended presentation was made in the author's "Politics and Administration" which appeared in 1899. It has had a great influence on the present book, even in more detailed phases, as in the discussion of the legislature's power of special legislation, appointment, and removal. Sacrificing the Montesquieu doctrine as it does, this distinction is none the less